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Supreme Court, U.S.
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No. 99-2055

IN THE

Supreme Court of the United States

STEVEN P. SHEA,

Petitioner,

v.

STATE OF FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE FLORIDA SUPREME COURT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the United States Supreme Court has jurisdiction pursuant to 28 U.S.C. § 1257 to review a decision rendered by the Supreme Court of Florida which removed a state court judge from office for 17 violations of the Canons of the Florida Code of Judicial Conduct where the "federal questions" raised in the petition for a writ of certiorari were not adequately presented to or passed upon by the state court and its decision is otherwise firmly based upon independent state grounds?

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OPINIONS BELOW

The opinion of the Florida Supreme Court removing Steven P. Shea from his position as a circuit court judge is reported at *In Re Shea*, 759 So. 2d 631, 2000 WL 300276 (Fla. 2000).

STATEMENT OF JURISDICTION

This Court is without jurisdiction pursuant to 28 U.S.C. § 1257 because the so-called "federal questions" presented by the Petition for Writ of Certiorari were not adequately presented to or passed upon by the Florida Supreme Court and, in any event, the removal of Steven P. Shea from judicial office for 17 separate violations of the Florida Code of Judicial Conduct rests firmly on independent state grounds.

REGULATIONS INVOLVED

The regulations involved are Canons 1, 2, 3, and 5 of the Florida Code of Judicial Conduct. The headings of the pertinent Canons are reproduced below:

Canon 1. A Judge Shall Uphold the Integrity and Independence of the Judiciary.

Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities.

Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

Canon 5. A Judge Shall regulate Extrajudicial Activities to Minimize the Risk of Conflict with Judicial Duties.

STATEMENT OF THE CASE

This case involves the removal of a Florida state court judge from office for 17 violations of the State Code of Judicial Conduct. Steven P. Shea took office as a circuit court judge for the 16th Judicial Circuit in Monroe County, Florida in January of 1995. On April 30, 1998, a little over three years into the judge's term, the Judicial Qualifications Commission ("JQC"), filed a Notice of Formal Charges in the Supreme Court of Florida

The Florida JQC was created by the Florida Constitution, article V, § 12, in 1966. Its function is to investigate and recommend to the Florida Supreme Court the removal from office of any judge whose conduct demonstrates a present unfitness to hold office or to recommend a reprimand.

As amended in 1996, the JQC was divided into two separate panels: (1) an investigative panel which receives, investigates and determines whether and when to initiate formal charges; and (2) a hearing panel, which receives and hears formal charges upon referral from the investigative committee. Fla. Const. Art. V, § 12(b) (1996 rev.). The Florida Supreme Court may then accept, reject, or modify the findings, conclusions and recommendations of the Commission, which may now include other forms of recommended discipline. Fla. Const. Art. V, § 12(c)(1) (1996 rev.).

Shea was initially charged with 33 violations of the Code, subsequently increased to 37. The case was tried to the hearing panel of the JQC during two non-consecutive weeks during November and December, 1998. After a full hearing, the JQC made factual findings and recommended to the Florida Supreme Court that Shea be removed from office. (Pet. App. 2, pp. 19-86). The JQC found Shea guilty of 17 specific charges of judicial misconduct, based on clear and convincing evidence, as well as a pattern of misconduct in "prefatory charges." The Supreme Court of Florida affirmed the JQC's findings and recommendations, in its entirety, removed Steven P. Shea as circuit judge, and directed that Shea pay the costs of the proceedings.

In its opinion removing Shea from the bench, the Florida Supreme Court detailed the behavior which it found to be "unbecoming a member of the judiciary . . . which, when considered together, emerge as a pattern of hostile conduct . . ." 759 So. 2d at 637. This conduct was grouped in several prefatory charges asserting that Shea abused the power of his judicial office by engaging in a pattern of vindictive and retaliatory conduct towards those who disagreed with him, including publicly holding the disagreeing party up to scorn and ridicule; launching unilateral investigations of the party's conduct and character; issuing self-serving orders that distorted the facts; airing petty grievances publicly in order to embarrass the parties; being verbally abusive to others and showing disrespect for fellow judges and encouraging others to do the same.

The general allegations were defined by multiple specific instances of misconduct. The JQC found that 17 specific charges[1] were proven by clear and convincing evidence, which are summarized as follows:

> (1) Judge Shea improperly contacted two attorneys and intimidated these attorneys into withdrawing from representation of their client by threatening to recuse himself from all of their cases;
>
> (2) Judge Shea entered an order directing a litigant to show cause why she should not be held in indirect criminal contempt for writing a letter to the Governor complaining of Judge Shea's handling of her support case;[2]
>
> (3) Judge Shea improperly sought to hold a counselor of Upper Keys Guidance Clinic in contempt and threatened to put the Clinic out of business;
>
> (4) Judge Shea limited the rights of pro se petitioners with domestic violence complaints by requiring employees of the Domestic Abuse Shelter to submit affidavits that stated that they

---

1. There were originally 18 individual charges. However, both the JQC and the Florida Supreme Court combined 2 separate charges into single charge (9).

2. This charge alone negates Shea's claim that "[n]o charge emanated from the public. All charges were levied by the JQC on behalf of a small interconnected courthouse group, and Mr. Reed." (Pet. p. 10, n.8).

did not furnish any assistance to the petitioners, chilling the willingness of victims and staff to come forward with legitimate claims. Judge Shea falsely stated in a letter to a newspaper that the staff of the shelter agreed to the use of these forms;

(5) Judge Shea engaged in a pattern of antagonism with court staff and other judges;

(6) Judge Shea independently investigated a bailiff by interviewing a witness concerning the bailiff without notice to the bailiff and without counsel on his behalf, intending to release the information to a newspaper;

(7) Judge Shea slammed a door in a bailiff's face;

(8) Judge Shea inappropriately criticized a bailiff;

(9) In a capital case, Judge Shea entered an order improperly implying that two attorneys were guilty of unethical conduct without allowing an opportunity to respond and threatening that he would refer any failure of counsel to comply with his directives to the Chief Justice of this Court;

(10) Judge Shea denied a proper motion for recusal and then entered an order improperly and inaccurately criticizing defense counsel without affording them an opportunity to respond;

(11) Judge Shea improperly suggested that attorneys in a domestic violence case were encouraging their client to disobey his orders by filing motions for a stay and improperly found the client to be in contempt;

(12) Judge Shea falsely accused an assistant state attorney of attempting to make ex parte contacts with him and threatened to report him to The Florida Bar;

(13) Judge Shea falsely accused an assistant state attorney of having stated that Judge Shea had engaged in ex parte communications;

(14) Judge Shea improperly sought to involve third parties in an internal dispute concerning court administrative matters by publicly disseminating his version of events;

(15) Judge Shea verbally attacked fellow judges in a regular meeting of the judges;

(16) Judge Shea violated the confidence of another judge by disclosing the contents of a confidential memorandum; and

(17) Judge Shea threatened to assess attorney fees against the Clerk of the Circuit Court.

In re Shea, 759 So. 2d at 632, 633.

The Florida Supreme Court denied Shea's motion for rehearing on May 25, 2000. Thereafter, Shea filed his Petition for Writ of Certiorari with this Court on June 22, 2000. Shea applied for a stay of the mandate, which Justice Kennedy denied on June 26, 2000. Shea's second application for stay was denied, after referral by Justice Thomas to the Court, on July 19, 2000.

SUMMARY OF THE ARGUMENT

This Court should deny Shea's Petition for Writ of Certiorari because it is without jurisdiction pursuant to 28 U.S.C. § 1257. The so-called "federal questions" presented in Shea's Petition were not sufficiently presented to or passed upon by the Florida Supreme Court. Further, the removal of Steven P. Shea from judicial office for 17 separate violations of the judicial canons rests firmly on independent state grounds.

The opinion issued by the Florida Supreme Court in this matter is silent as to any federal question or issue. Shea, therefore, has the burden of demonstrating that the highest state court had a fair opportunity to address them. Shea does not, and cannot, point to anything in the record below to support this court's certiorari jurisdiction, and clearly fails to meet his burden. Nor were any "federal questions" or constitutional issues presented to the Florida Supreme Court in Shea's Initial Brief, Reply Brief, or Motion for Rehearing. Any references to violations of "First and Fourteenth Amendment Rights" in the proceedings below were asserted pre-trial *only*, were cursory at best, and most assuredly were not the subject of any order, ruling or opinion in this case, including the opinion rendered by the Florida Supreme Court.

As to the merits, Petitioner throws everything conceivable into this last-ditch effort to save his judgeship. Respondent addresses several of the issues raised in Shea's Petition only to correct the many inaccuracies contained therein. Suffice it to say that enormous time, effort and expense has been expended in removing Mr. Shea from judicial office, and that Florida has gone to great pains to ensure that this lengthy process was fair to all. Mr. Shea has been afforded all process that was due him and then some. Denial of this Petition for Writ of Certiorari is a fitting end.

ARGUMENT

A. REASONS TO DENY THE PETITION.

This Court is without jurisdiction pursuant to 28 U.S.C. § 1257 because the so-called "federal questions" presented by the Petition for Writ of Certiorari were not sufficiently presented to or passed upon by the Florida Supreme Court and, in any event, the removal of Steven P. Shea from judicial office for 17 separate violations of the judicial canons rests on adequate and independent state grounds.

Petitioner claims that "federally protected principles of free speech, procedural and substantive due process, as well as constitutional protections of the independence of the judiciary" have been violated. (Pet. p. 7). Accordingly, Shea invites this Court to engage in "de novo review" of these "federal issues." This completely ignores the confines of this Court's certiorari jurisdiction to review decisions emanating from the state courts.[3]

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3. For example, in support of his "Reasons to Grant the Petition" Shea refers to a newspaper article of June 10, 2000 (Pet. 9) from the St. Petersburg Times which was written well after the Florida Supreme Court opinion of March 23, 2000. Moreover, it describes an entirely different JQC case against another judge. (Pet. App. 139). This document was obviously not considered below and thus, should be stricken from the appendix.

The Supreme Court of the United States's jurisdiction over decisions from state courts derives from 28 U.S.C. § 1257, which provides:

> **§ 1257. State courts, certiorari**
>
> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity specially set up or claimed under the constitution or the treaties or statutes of, or any commission held or authority exercised under the United States.

With "very rare exceptions," in reviewing state court judgments under § 1257, this Court has adhered to the rule that it will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision to be reviewed. *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 533 (1992); *Heath v. Alabama*, 474 U.S. 82, 87 (1985); *Illinois v. Gates*, 462 U.S. 213, 217-219, *reh. denied*, 463 U.S. 1237 (1983). If both of these requirements do not appear on the record, appellate jurisdiction fails. *Cardinale v. Louisiana*, 394 U.S. 437 (1969).

There are sound purposes underlying this "not pressed or passed upon" rule. First, questions not raised below are

those on which the record is very likely to be inadequate, since the record "was not compiled with those questions in mind." *Id.* It is also important that state courts be given the first opportunity to consider the constitutionality of the actions of state officials. *McGoldrick v. Compaignie Transatlantique*, 309 U.S. 430, 434 (1940).

For example, Shea asserts that the "constitutional structure of the JQC, in regulating and monitoring the Florida Supreme Court, is unconstitutional on its face and as applied in this case, and violates the due process safeguards of the Fourteenth Amendment." (Pet. p. 10). This issue was never presented to the JQC or the Supreme Court of Florida, and is precisely the kind of issue that the state court should have been given an opportunity to address first. Adhering to this rule permits the state court to rest its decision on adequate and independent state grounds. *Cardinale v. Louisiana*, 394 U.S. 437 (1969).

When the highest state court is silent on a federal question, this Court assumes that the issue was *not* properly presented. *Board of Directors of Rotary Int'l v. Rotary Club of Duarte*, 481 U.S. 537, 550 (1987). The aggrieved party bears the burden of defeating the assumption by demonstrating that the state court had a "fair opportunity to address the federal question that is sought to be presented." *Webb v. Webb*, 451 U.S. 493, 501 (1981).

Shea fails to meet this burden. Shea does not, and cannot, point to anything in the record below to support this court's certiorari jurisdiction. Recognizing, *sub silentio*, this failure to present the federal issue to the Florida Supreme Court, Shea seeks to suggest that the thirty seven motions for summary judgment he filed in the proceedings below "set

out factual and legal grounds regarding the violations of Petitioner's First and Fourteenth Amendment rights and the judicial independence issues, as did all subsequent briefs." (Pet. p. 5). This contention is totally without merit. Any references to these issues were pre-trial *only*, were cursory at best, and most assuredly were not the subject of any order, ruling or opinion in this case, including the opinion rendered by the Florida Supreme Court.

Distilled to its essence, Shea's Petition raises no "federal questions" but merely reiterates Petitioner's complaints of "vindictiveness" on the part of the JQC and the "unduly harsh" sanction of removal. What the *evidence* showed, as reflected by the Florida Supreme Courts' opinion is that:

> *Judge Shea engaged in a pattern of conduct in which he acted with hostility towards attorney's, court personnel, and fellow judges.* The totality of the proof in the record supports the conclusion that Judge Shea's conduct in too many instances was not to the standard required of a member of the judiciary. *Judge Shea's lack of respect and temperament in dealing with others with whom he had contact while he served as a judge seriously undermined public trust in the judicial office.*

In re Shea, 759 So. 2d 631, 637 (Fla. 2000) (citations omitted) (emphasis added).

Shea's removal was firmly based on adequate and independent state grounds, and it is therefore, unnecessary for this Court to look beyond the first charge. The Justices of the Supreme Court of Florida found particularly

compelling the evidence regarding Charge 1, stating it was "*such a substantial offense that it alone is sufficient to warrant Judge Shea's removal from the bench.*" *In re Shea*, at 633 (emphasis added).

The Supreme Court of Florida agreed with the JQC that Judge Shea's conduct in negotiating with lawyers appearing before him for his own pecuniary gain, in and of itself, constituted sufficient basis for his removal from office. It concluded that Shea violated Canon 1 ("[a] judge shall uphold the integrity and independence of the judiciary") and Canon 2 ("[a] judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities"), and explained further that:

> Our decision is not to be read to indicate that Judge Shea's recusal from a case in which these attorneys were involved would have been improper. *What was plainly a violation of the Code was Judge Shea's bargaining in respect to a recusal decision.* Judge Shea made it clear to the attorneys that they could either withdraw from representing their clients or have their clients purchase the trailers to avoid his recusal. *Such bargaining was an improper use of his judicial office to gain a personal financial benefit and was a breach of the integrity of the judiciary. We agree with the hearing panel that such a breach of judicial integrity can in no way be tolerated.*

Id. at 637-38. (Emphasis added).

Dishonest use of office to obtain a personal pecuniary advantage has *always* warranted removal from office.

It likewise warranted Shea's removal here. "A judgeship is a position of trust, not a fiefdom." *In re Graham*, 620 So. 2d 1273, 1277 (Fla. 1993), *cert. denied*, 510 U.S. 1163, 114 S. Ct. 1186, 127 L. Ed. 2d 537 (1994). A judge's authority "should never be autocratic or abusive." *In re Turner*, 421 So. 2d 1077, 1081 (Fla. 1982). It is critical that a judge never seek to use his power "in a fit of anger, in an arbitrary manner, or for the judge's own sense of justice." *In re Perry*, 641 So. 2d 366, 369 (Fla. 1994). The record overwhelmingly demonstrates that Shea repeatedly resorted to threats and the use of power in anger, arbitrarily and in fits of pique, and that his conduct had a serious impact on others.

In conclusion, this Court lacks jurisdiction to entertain Shea's Petition for Writ of Certiorari, and this is not a close call. Shea's so-called "federal questions" were not adequately presented below and most certainly were not passed on by the Florida Supreme Court, which, in any event, based its decision removing Shea from judicial office on adequate and independent state grounds. As to the merits, Respondent writes further *only* to correct the many inaccuracies contained in Shea's Petition. Rule 15.2, Rules of the Supreme Court of the United States.

B. SHEA RECEIVED MORE PROCESS THAN WAS DUE.

Shea claims he was denied due process. Procedural due process in JQC proceedings requires that Shea be afforded notice and an opportunity to be heard. *In re Kelly*, 238 So. 2d 565, 571 (Fla. 1970), *cert. denied sub nom, Kelly v. Florida Judicial Qualifications Commission*, 401 U.S. 962, 91 S. Ct. 970, 28 L. Ed. 2d 246 (1971). The record does not support Shea's claim, and it should, therefore, be rejected.

Shea and his counsel had six months to prepare for trial. Prior to trial, Shea filed 37 separate unfounded motions for summary judgment directed to each and every charge, irrespective of material factual conflicts. Each motion required a response by Special Counsel and each was ultimately denied pretrial.

Special Counsel called 24 witnesses and concluded their entire case in three and a half days. Special Counsel shortened the case by dropping twelve of the charges. *The defense called 53 witnesses.* It presented its case for one and a half days in November, and four days during December 14, 1998 through December 18, 1999. *The trial transcript is 2,982 pages long. The record further includes multiple exhibits, including depositions.*

Shea was actually given wide latitude in presenting his defense, as reflected by the following comment by the Chairman of the JQC panel stating early on that "[I]'m not going to rein you in. . . . I'm not going to make any effort to direct it or slow it down. This is Judge Shea's career, and I'm going to let you all do whatever you think you want to do. . . ." (Proceedings 12/14/98, T. 16).

Both parties filed extensive post-trial memoranda (T. 2979). Judge Shea was granted an extension of time to submit his memorandum, and to designate deposition objections to depositions already in evidence. (T. 2980). His memorandum was submitted on January 11, 1999. (D.E. 388). He filed no deposition objections.

Shea also complains about "unspecified, ambiguous 'prefatory' charges filed in contravention of [JQC Rule 6(g)]." (Pet. p. 14). Commission Rule 6(g) states that the

Investigative Panel's notice of formal charges "shall . . . specify in ordinary and concise language the charges against the judge and allege the essential facts upon which such charges are based. . . ." The Amended Notice of Formal Charges ("Notice of Formal Charges") involved here fully complies with this rule.

The second paragraph of the Notice of Formal Charges states that Judge Shea is charged with "repeatedly abus[ing] the power of [his] judicial office by engaging in a pattern of vindictive and retaliatory conduct towards anyone who disagree[d] with [him] on any subject." (Notice of Charges at 1). Paragraph two then lists six sub-paragraphs describing the various types of vindictive and retaliatory actions in which Judge Shea had engaged. (Notice of Charges at 1-2). The third paragraph of the Notice identifies the various categories of individuals who have been the subject of Judge Shea's abuse. (Notice of Charges at 2). It is these two paragraphs of the Notice of Charges which have come to be referred to in these proceedings as the "prefatory charges."

Shea overlooks, however, the 37 separately numbered paragraphs which follow the "prefatory charges". These 37 paragraphs specifically set forth the essential facts upon which the preceding "prefatory charges" are based. (Notice of Charges at 2-13). Moreover, the Notice of Charges identifies paragraphs 1-37 as specific examples of the pattern of vindictive and retaliatory conduct in which he engaged. (Notice of Charges at 2).

The JQC did not violate Commission Rule 6(g) nor did it violate fundamental notions of due process. *See Jent v. State*, 408 So. 2d 1024, 1030 (Fla. 1981), *cert. denied*, 457 U.S. 1111, 102 S. Ct. 2916, 73 L. Ed. 2d 1322 (1982)

("An indictment must fulfill two requirements: the defendant must be apprised of the charges sufficiently to enable preparation of a defense, and the allegations must be specific enough to protect the defendant against being placed in jeopardy twice for the same offense."); *State v. Mena*, 471 So. 2d 1297, 1301 (Fla. 3d DCA 1985) ("[A]ll that is required of the information is that it sufficiently apprise the defendant of the charges against him so that he may adequately prepare his defense and not be unfairly surprised by the evidence he is called upon to meet."). Shea received notice of the charges, a full and fair hearing, and an ample opportunity to defend. *See In re Graziano*, 696 So. 2d 744, 750 (Fla. 1997); *In re Shenberg*, 632 So. 2d 42 (Fla. 1992).

C. THE RECUSAL OF JUDGE KANEY WAS NOT WARRANTED.

The Petitioner claims that the proceedings were tainted by the failure of Judge Frank N. Kaney, Chair of the JQC, to recuse himself. The allegations were summarily denied by the Florida Supreme Court, finding them "insufficient" to meet the threshold for recusal. *In re Shea*, 759 So. 2d 638. A motion for recusal must allege facts which would place a reasonably prudent person in fear of not receiving a fair trial. *Correll v. State*, 698 So. 2d 522 (Fla. 1997).

This issue obviously does not involve a "federal question." Respondent offers the following to correct the distortions of the record that Shea persists in presenting.

Shea's first motion to recuse hearing panel chairman Hon. Frank Kaney was filed May 11, 1998. It contained insufficient facts, and rampant speculation that "Judge Kaney may have had conversations with Judge Miller or Judge

Ptomey or someone else from Monroe County regarding complaints against Respondent. . . ." (D.E. 30, 31).

The motion stated the following "facts":

> 4. Circuit Judge Kaney has served and is currently serving as Dean of the Florida Judicial College. County Judge Wayne Miller is currently serving as Associate Dean of the Florida Judicial College. (See Program Sheet marked Exhibit A.)
>
> 5. County Judge Reagan Ptomey has served on or is currently a member of the faculty of the Florida Judicial College.
>
> 6. During a conversation between Judge Kaney and Respondent, at the 1997 Circuit Judge Conference, Judge Kaney made a comment to Respondent about "blasting" attorneys. Based on the comment, *Respondent believes that Judge Kaney may have had conversations with Judge Miller or Judge Ptomey or someone else from Monroe County* regarding complaints against Respondent. . . .

D.E. 30 (emphasis added).

Shea's motion conspicuously declined to describe the contents of the conversation he ascribed to Judge Kaney, and contained no evidence of *ex parte* communications, but his rank speculation that such must have occurred. The supporting affidavits were equally deficient.

On October 23, 1997, Shea filed a "Renewed Request for Hearing Panel Review of Order on Motion for *Disqualification based on newly discovered evidence.*" Contrary to suggestion (Pet. p. 12), this renewed request was not "ignored." The motion was denied because it *too was entirely unsupported*, and contained no "newly discovered evidence."[4]

In his Petition to this Court, Shea makes another unfounded allegation against Judge Kaney accusing him of impropriety by "dining with a prosecution witness during the course of the JQC hearing in Key West." (Pet. p. 12, n.13). The *facts* are these. On December 14, 1998, during the second session, Chairman Kaney alerted the parties to a problem that had just arisen at the Judicial college, where he was the Dean and Judge Miller an associate Dean. The problem, *as disclosed*, was that Judge Kathleen Kearney was in charge of two phases of the new judges program — mentorship and video — and the new judges college was set to convene on January 4th, 1999 — merely two weeks hence. However, the Governor had just appointed Judge Kearney to be his Secretary of the Department of Children and Families.

---

4. Shea makes another equally unfounded accusation against Justices Harding and Wells of the Florida Supreme Court. (Pet. p. 11). Shea asserts the Justices should have disqualified themselves from hearing his appeal because the "Justices *may be under investigation by the . . . JQC.*" (App. 6) (Emphasis added). The sole basis of the motion for disqualification was a newspaper article in the St. Petersburg Times dated March 18, 2000, which alleged that the Justices assisted in shaping the Death Penalty Reform Act passed by the Florida Legislature in January of 2000. The Florida Supreme Court summarily denied Shea's motion, which did nothing more than evidence his willingness to hurl unfounded charges at all who ruled against him.

In full compliance with the Code of Judicial Conduct, Chairman Kaney called the parties together and fully disclosed that he and Judge Miller needed to discuss what they were going to do to replace Judge Kearney. (12/14/98 transcript; pages 17-18, Supp. Appendix to Petitioner's answer brief). The Chairman emphasized that he and Judge Miller "from the . . . beginning" had never talked about this case and they "would continue with that." (*Id.* at p. 17). At that point, attorney Wattigny, one of Shea's trial lawyers, explored the issue further with Judge Kaney:

> Mr. Wattigny: Are you talking about discussions you need to have with Judge Miller this week?
>
> The Chairman [Judge Kaney]: Yes, I'm looking at January 3rd as the new judges college with somebody down — I'm already one person short. Plus, now I have a leadership problem. That mentorship program I can probably handle by March, although I don't want to go that long. But the video experience thing, we're talking about Sunday afternoon, January the 3rd, I've got to have somebody there that can run that program because that's a big faculty that comes in.

Id. at p. 18.

Here there was full disclosure on the record to both parties prior to any discussion commencing between the Chairman and the witness. Shea simply took no action and made no objection. In fact, he later testified at trial that he believed the panel to be "very fair and impartial." (T. 2913). Shea's failure to object should put an end to this matter — and precludes his complaining *again* here.

D. THE ALLEGATIONS OF PROSECUTORIAL MISCONDUCT ARE WITHOUT MERIT.

Predictably, Petitioner also claims prosecutorial misconduct "in not only publicly pursuing uncharged matters, but also in distorting, fabricating, and instigating false and defamatory charges against Petitioner — all charges eventually dismissed." (Pet. p. 14). Shea flat out admits that this issue was not addressed by the Florida Supreme Court. (Pet. p. 15). The JQC responds briefly only to correct Shea's assertion that JQC trial counsel admitted to "fabricating the charge", quoting counsel as stating ". . . the mistake in the drafting of the (gun brandishing) charges was a mistake that I made." (Pet. p. 15).

First, a "mistake" is not a "fabrication." Second, the quote is taken out of context. Special Counsel's comment arose during the questioning of witness Melody Wilkinson, a former baliff in Shea's courtroom. The following colloquy took place:

> Ms. Ross: . . . Just so we're clear, Ms. Wilkinson, you did not at any time indicate that Judge Shea had actually brandished a loaded firearm. Correct?
>
> A. No, he did not.
>
> Q. You indicated that *he threatened to draw a firearm. Correct?*
>
> A. That's correct.

Q. *And the mistake in the drafting of the charges was a mistake that I made*?

A. Correct.

Q. It was anything that you had done?

A. No, it was not. And I was upset about that.

Q. You were upset about it. It got reported in the press. And you had never said that Judge Shea brandished a weapon. *You indicated that he had threatened to brandish a weapon*?

A. That's correct.

T. 870-71 (emphasis added).

The charge was amended to more accurately reflect that Shea had "threatened" to brandish a weapon. Counsel was simply relieving the witness of responsibility for any "mistake" in the drafting of the charge, and accepting it herself. In any event, the hearing panel acquitted Shea of this charge.

E. THE FLORIDA SUPREME COURT REVIEWED THE RECORD.

Respondent also takes exception to Shea's charge that the Florida Supreme Court did not independently review the record. Shea bases this unfounded accusation on the fact that "[t]he FSC found it unnecessary to specify any details as regards 17 charges, despite their constitutional obligation to

independently review the record." (Pet. p. 8 n.6). Here is what the Florida Supreme Court actually said:

> We do not believe it to be necessary to set out in detail *the hearing panel's exhaustive findings of fact [68 pages] concerning Judge Shea's conduct in respect to the specified charges.*

759 So. 2d at 637 (emphasis added).

This statement can only be read to mean that the Florida Supreme Court reviewed the record in its entirety and did so following an exhaustive 68-page report from the JQC hearing panel.

F. SHEA'S HOSTILE TREATMENT OF HIS FELLOW JUDGES.

Shea claims his First Amendment rights were violated when the Florida Supreme Court found misconduct based upon private internal conversations with his judicial colleagues. Notwithstanding his failure to make a First Amendment claim in the Florida Supreme Court, Shea makes the bold statement that: "[d]iscussions between judges in private cannot constitute Code violations, irrespective of the subject matter, the nature of the comments, the personal convictions which prompted the comments, the decibel level of the comments, or the colorfulness of the rhetoric." (Pet. p. 21). Respondent strongly disagrees. Here are just two examples of Shea's objectionable treatment of his colleagues, which clearly crosses the line of permissible conduct expected of judicial officers.

In late October or November 1997, Judge Shea launched an attack on Judge Wayne Miller over a ruling Judge Miller had made releasing a defendant on bond over Judge Shea's suggestion on the arrest warrant of a no-bond-allowed. (T. 937-48). After Judge Miller apologized to Judge Shea for not contacting him before changing the bond, he responded by telling Judge Miller that "[you have been] condescending to me ever since judicial college, you and your little snide remarks." (T. 945). Judge Miller was "really taken aback by the viciousness in his tone" and his "vindictiveness." (T. 945). Judge Miller testified that Judge Shea's demeanor during this five minute telephone conversation was "like letting an animal out of a cage." (T. 947-48). Judge Miller was "shocked and really dismayed by the attitude that [Shea] showed and the aggressiveness of his tone." (T. 948).

Another event exemplifies Judge Shea's hostility towards, and lack of cooperation with, his judicial colleagues. Judge Shea publicly disseminated a memo he authored which critically attacked a decision his fellow judges made to eliminate Official Court Reporters in all civil cases. At the next regularly scheduled judges's meeting, some of the judges expressed their concern to Judge Shea that he had chosen to take his grievance regarding the court reporter issue *public* by disseminating his memorandum directly to the Upper Keys Bar Association, without first affording them the opportunity to know his position and the contents of his memo, or affording them the opportunity for consideration of all views and discussion among themselves. (T. 1005-08; T. 1048; T. 1109-1110).

At this point, Judge Shea became agitated, made abusive and derogatory remarks to his colleagues, and told them that

he had talked to lawyers and judges around the state about all of them and that the lawyers and judges had absolutely no respect for any of them. (T. 1005-008; T. 1109-1110). Judge Shea then told his colleagues that "he didn't care how or what [they] thought about what he did, *he was going to continue to do exactly what he wanted to do*" and that "*he was going to go public with whatever he wanted to go public [with] because that seemed to get things done.*" (T. 1008; T. 1109-1110, emphasis added). Discussion ceased when Judge Shea stormed out of the room. (T. 1008). These parting words by Shea to his fellow judges evidence his intention to continue employing whatever methods he chose to accomplish his goals, no matter what effect his methods might have on others.

The remaining issues warrant no further discussion. Suffice it to say that, enormous time, effort, and expense has gone into the prosecution of this matter. The State of Florida has gone to great pains to ensure that this lengthy process was fair to all. The Florida Supreme Court was completely justified in removing from office this dishonest, autocratic, and abusive judge, whose conduct so clearly crossed the line of acceptable judicial behavior. It is respectfully submitted that this matter should now be brought to an end.

CONCLUSION

For all the foregoing reasons, Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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